

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



September 16, 2003

Regulation Package #0902-23

CDSS MANUAL LETTER NO. CCL-03-08

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 8.5, RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL

Regulation Package #0902-23**Effective 7/16/03****Sections 87801, 87819, 87819.1, 87854, 87861, 87865, and 87866**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/Residentia_634.htm.

Currently, the Community Care Licensing Division (CCL) of the California Department of Social Services (CDSS) has regulations in place that apply to all community care facilities (Division 6) and to all child care centers (Division 12). The regulations amend the current CCL regulations by amending the applicable existing Definition; Criminal Record Clearance; Criminal Record Exemption; and Personnel Record Sections throughout Division 6, Chapters 1, 8, and 8.5 and Division 12, Chapters 1 and 3. The amendments are consistent with Health and Safety Code Sections 1522, 1522.1, 1568.09, 1569.17, 1596.871, and 1596.877, which were amended by Senate Bill (SB) 1984, Chapter 1267, Statutes of 1994. SB 1984 requires that the Department place into regulations existing policies and criteria, that have been used and refined for approximately 25 years, to evaluate criminal record exemption requests. Where necessary, regulations throughout all affected sections have been reworded and/or restructured for clarity and consistency.

The attached regulations contain the portion of the emergency regulations that pertain to Residential Care Facilities for the Chronically Ill, Division 6, Chapter 8.5.

These regulations were adopted on an emergency basis effective July 16, 2003 and will be considered at the Department's public hearing to be held on October 15, 2003.

FILING INSTRUCTIONS

All new revisions are indicated by a vertical line in the left margin. Revisions shown in graphic screen will continue to be shown in that manner until new revisions are done to those pages. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-03-07. The latest prior manual letter containing Residential Care Facilities for the Chronically Ill regulation changes was Manual Letter No. CCL-02-14.

Page(s)

8 through 15
24 through 35.1
64 through 68
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86 and 87

Replace(s)

Pages 8 through 15
Pages 24 through 33
Pages 64 through 68
Page 72
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Attachments

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- (B) the lease agreement or rental agreement; or
 - (C) a court order or similar documents which shows the authority to control the property pending outcome of a probate proceeding or an estate settlement.
- (10) "Conviction" means:
 - (A) A criminal conviction in California; or
 - (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- (11) "Criminal Record Clearance" means an individual has a California Department of Justice clearance and an FBI clearance.
- (12) "Culturally Appropriate Services" mean those services which are planned, offered, and provided by taking into consideration such characteristics of the residents as ethnic/racial group; primary language; preferred foods/diet and meal preparation; preferred manner of dress and clothing; religious affiliation; sexual preference; and educational background.
- (d)
 - (1) "Deficiency" means any failure to comply with any provision of the Residential Care Facilities for Persons with Chronic, Life-Threatening Illness statute (Health and Safety Code, Section 1568.01, et seq.) and/or regulations adopted by the Department pursuant to this statute.
 - (2) "Dementia" means a deterioration of intellectual function and other cognitive skills, leading to a decline in one's ability to perform activities of daily living.
 - (3) "Department" means the California State Department of Social Services.
 - (4) "Department of Justice Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

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- (5) "Developmental Disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for such individual, as specified in Welfare and Institutions Code Section 4512(a).

Persons who are developmentally disabled shall include persons who have been diagnosed as having mental retardation, cerebral palsy, epilepsy, autism, or who have handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

- (6) "Direct Care Attendant" means an individual, employed by a Home Health Agency, who renders direct care services to a resident.

- (7) "Direct Care Services" means the assistance with or performance of services to meet the needs of the resident, including but not limited to, activities of daily living.

- (8) "Direct Care Staff" means those individuals employed by the facility and who provide direct care services to the residents including, but not limited to, assistance with activities of daily living.

- (9) "Director" means the Director of the California State Department of Social Services.

- (10) "Documentation" means written information required to be completed and maintained at the facility by the licensee.

- (11) "Do Not Resuscitate Directive" means the written directions of the resident or the person who holds Durable Power of Attorney for Health Care for the resident to the resident's primary care physician to withhold emergency resuscitation should the resident stop breathing and to request the issuance of a Do Not Resuscitate Order by the physician.

- (12) "Do Not Resuscitate Order" means the order of the resident's primary care physician to alert appropriately skilled professionals that the resident does not want measures to be taken to resuscitate him/her and to withhold emergency resuscitation should the resident stop breathing.

- (13) "Durable Power of Attorney for Health Care" means a power given to a person to act on behalf of another person in the event that the resident becomes unable to give informed consent to health care as specified in California Civil Code, Sections 2430 et seq.

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- (e) (1) "Emergency Approval to Operate" (LIC 9117 4/93) (EAO) means a temporary approval to operate a facility for no more than 60 days pending the Department's decision on whether to approve or deny a provisional license.
- (2) "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department.
- (3) "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary or a letter from the attending physician or coroner's office verifying the licensee's death.
- (4) "Exception" means a written authorization issued by the Department to use alternative means which meet the intent of a specific regulation(s) and which are based on the unique needs or circumstances of a specific resident(s) or staff person(s). Exceptions are granted for particular resident(s) or staff person(s) and are not transferable or applicable to other residents, staff persons, facilities or licensees.
- (5) "Exemption" means an exception to the requirements of Health and Safety Code Section 1568.09 and applicable regulations. Exemptions are not transferable.

HANDBOOK BEGINS HERE

- (A) Section 1568.09(a) of the Health and Safety Code states:

If it is found that the applicant or any other person specified in Subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the California Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

HANDBOOK ENDS HERE

- (f) (1) "Family unit" means a group composed of at least one parent or guardian and at least one of that person's minor children and in which at least one adult or child, or both, has HIV disease or AIDS.
- (2) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

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- (g) (Reserved)
- (h) (1) "Hazardous Waste" means "medical waste" as defined by Health and Safety Code Section 25023.2 and "hazardous waste" as defined in Health and Safety Code Section 25117.
- (2) "Home Health Agency" means a provider licensed by the Department of Health Services in accordance with Health and Safety Code Section 1725 et seq. to perform various health related services to a person in his/her own home or in a licensed or exempt facility.
- (i) (1) "Individual Services Plan" means the documentation of the needs and services required by the resident as specified in Section 87896.
- (2) "Individual Services Team" means those individuals who are involved in the planning and/or delivery of services or care to the resident as specified in Section 87896(b).
- (3) "Instruct" means to furnish an individual with knowledge or to teach, give orders, or directions regarding a process or procedure.
- (4) "Intermittent Home Health Care" is the treatment and/or observation of a resident by an appropriately skilled professional for a maximum of eight (8) hours per day per resident in the facility.
- (j) (Reserved)
- (k) (Reserved)
- (l) (1) "License" means written authorization to operate a Residential Care Facility for the Chronically Ill and to provide care and supervision. The license is not transferable.
- (2) "Licensee" means the adult, firm, partnership, association, corporation, county, city, public agency, or other governmental entity having the authority and responsibility for the operation of a licensed Residential Care Facility for the Chronically Ill.
- (m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

87801	DEFINITIONS (Continued)	87801
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- (2) "Mental Disorder" means any of the disorders which render a person eligible for the services enumerated under the Lanterman-Petris-Short Act, commencing with Section 5000 of the Welfare and Institutions Code.
- (n) (1) "Nonambulatory persons" means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. A person is not deemed nonambulatory solely because he/she is deaf, blind or prefers to use a mechanical aid.
- (2) "Nutritionist" means a person who has a master's degree in food and nutrition, dietetics, or public health nutrition, or who is employed as a nutritionist by a county health department.
- (o) (Reserved)
- (p) (1) "Physician" means a person licensed as a physician by the California Medical Board or by the California Board of Osteopathic Examiners.
- (2) "Provision" or "Provide" means the licensee shall make available any service, personnel, or meet other requirements, directly or present evidence to the Department that the requirement has been met by some other means.
- (3) "Provisional License" means a license which is temporary, nonrenewable and issued for a period not to exceed twelve months.
- (4) "Psychosocial Support Services" means counseling services provided to the resident to enable him/her to accept/acknowledge his/her chronic illness and its probable cause and outcome.
- (q) (Reserved)
- (r) (1) "Registered Nurse Case Manager" means the registered nurse who is responsible for coordinating the delivery of services as identified in the Individual Services Plan.

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- (2) "Rehabilitation" means that period of time, together with any education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service which assist an individual in reestablishing good character.
- (3) "Relative" means the resident's spouse, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution. Such relationships include kinships formed by birth or adoption.
- (4) "Resident" means any or all of the following: any adult receiving care and supervision, any emancipated minor receiving care and supervision, and any adult or unemancipated minor in a family unit.
- (5) "Residential Care Facility for the Chronically Ill" means any place, building, or housing arrangement which is maintained and operated to provide care and supervision to all or any of the following:
 - (A) Adults with HIV disease or AIDS,
 - (B) Emancipated minors with HIV disease or AIDS, or
 - (C) Family units as defined in Section 87801(f)(1) with adults or children or both with HIV disease or AIDS.
- (s) (1) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of the residents of Residential Care Facilities for the Chronically Ill.
- (2) "Shall" means mandatory.
- (3) "Significant Other" means a person, including a person of the same sex, with whom a resident was sharing a partnership prior to his/her placement in a Residential Care Facility for the Chronically Ill. The partnership involves two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.
- (4) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1568.09(c)(5), if the individual's criminal history meets specific criteria established by Department regulation.

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- | (5) "Social Worker" means a person who has a graduate degree from an accredited school of social work or social welfare.
- | (6) "SSI/SSP" means the Supplemental Security Income/State Supplementary Program which is a federal/state program that provides financial assistance to aged, blind and/or disabled residents of California.
- | (7) "Substantial Compliance" means the absence of any serious deficiencies.
- | (8) "Substantiated Complaint" means a complaint which has been investigated by the Department, and as a result, a violation of regulations or statute has been found.
- | (9) "Supervision" means to oversee or direct the activity of a subordinate but does not necessarily require the immediate presence of the supervisor.
- | (10) "Support Staff" means those individuals working in the facility, in an ancillary position, including but not limited to, housekeeper, cook, or maintenance personnel.
- (t) (1) "Transfer Trauma" means the consequences of the stress and emotional shock caused by an abrupt, involuntary relocation of a resident from one facility to another.
- (2) "Tuberculin Skin Test" means using the Mantoux technique and recording test results in millimeters of induration (swelling).
- (u) (1) "Unlicensed Residential Care Facility for the Chronically Ill" means a facility is providing or has promised to provide care and supervision, as defined in Subsection (c) (2) above. Examples of unlicensed facilities shall include, but not be limited to, any one of the following circumstances:
 - (A) The facility accepts or retains residents who demonstrate the need for care or supervision, without being licensed as a Residential Care Facility for the Chronically Ill. Such unlicensed facilities shall include, but not be limited to:
 - (1) A facility whose license has been revoked or denied, but the facility continues to provide care for the same residents or different residents with similar needs.
 - (2) A facility where a change of ownership has occurred and the same residents are retained and the new owner has not filed an application for license.
 - (3) A licensed facility which moves to a new location without filing a new application for license.

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- (4) An unlicensed facility which advertises as providing care and/or supervision.
 - (5) A facility with residents requiring care and/or supervision, even though the facility is providing board and room only, or board only, or room only.
 - (6) A facility, where it is apparent that care and/or supervision are being provided by virtue of the resident's needs being met.
- (2) "Urgent Need" means a situation where prohibiting the operation of the facility would be detrimental to the residents' physical health, mental health, safety, or welfare. Circumstances constituting urgent need include, but are not limited to, the following:
- (A) A change in facility location when residents are in need of services from the same operator at the new location.
 - (B) A change of facility ownership when residents are in need of services from a new operator.
- (v) "Voluntary" means resulting from free will.
- (w) (1) "Waiver" means a nontransferable written authorization by the Department to use alternative means which meet the intent of a specific regulation and which are based on a facility-wide need or circumstance.
- (2) "Wound" means a surgical incision, laceration of the skin, Stage I or II decubitus ulcers, skin eruptions or skin lesions.
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.01, 1568.02, 1568.03, 1568.061, 1568.064, 1568.072, and 1797.196, Health and Safety Code.

87819	CRIMINAL RECORD CLEARANCE	87819
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- (a) The Department shall conduct a criminal record review of all the persons listed in Subsection (b) below and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility based upon the results of such review.
- (1) Prior to the Department issuing a license, the applicant, administrator and any adults, other than a client residing in the facility shall obtain a California criminal record clearance or exemption.

HANDBOOK BEGINS HERE

- (A) Section 1568.09(b) of the Health and Safety Code states in part:

If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

HANDBOOK ENDS HERE

- (2) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
- (A) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
- (B) A copy of the individual's:
1. Driver's license, or
 2. Valid identification card issued by the Department of Motor Vehicles, or
 3. Valid photo identification issued by another state or the United States government if the individual is not a California resident.
- (C) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

HANDBOOK BEGINS HERE

(D) Section 1568.09(g) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

HANDBOOK ENDS HERE

(3) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

(A) A person signing the LIC 508 must:

1. Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87819(g).
2. If convicted of a crime other than a minor traffic violation, as specified in Section 87819(g), provide information regarding the conviction.

(4) The licensee shall submit the fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or complying with Section 87819(a)(2) prior to the individual's employment, residence, or initial presence in the facility.

(A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.

(B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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1. If the Department determines that the licensee or applicant has violated Section 87819(a)(4)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.
- (b) The following persons and any other adults specified in Health and Safety Code Section 1568.09 shall be required to be fingerprinted and comply with applicable criminal records requirements:
- (1) The applicant for the license.
 - (A) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.
 - (2) Adults responsible for administration or direct supervision of staff.
 - (3) Any person, other than a resident, residing in the facility.
 - (4) Any facility personnel who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Health and Safety Code Section 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the Department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Health and Safety Code Section 1558.
 - (5) Any staff person or employee who has contact with the residents.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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(c) The following individual's are exempt from the requirements applicable under Section 87819(b).

- (1) A medical professional, as defined in Section 87801(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:
 - (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's governing California medical care regulatory entity.
 - (B) The individual is providing time-limited specialized clinical care or services.
 - (C) The individual is providing care or services within the individual's scope of practice.
 - (D) The individual is not a community care facility licensee or an employee of the facility.
- (2) A third-party repair person or similar retained contractor, if all of the following apply:
 - (A) The individual is hired for a defined, time-limited job.
 - (B) The individual is not left alone with clients.
 - (C) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.
 - (A) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- (4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with permission of, the client.
 - (A) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (5) Members of fraternal, service and similar organizations who conduct group activities for clients if all of the following apply:
 - (A) Members are not left alone with the clients.
 - (B) Members do not transport clients off the facility premises.
 - (C) The same group does not conduct such activities more often than once a month.
- (6) A volunteer if all of the following apply:
 - (A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The volunteer is never left alone with clients.
 - (C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- (7) The following individuals unless contraindicated by the client's needs and service plan:
 - (A) A spouse, relative, significant other, or close friend of a client.
 - (B) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.
 - (C) The exemptions in Sections 87819(d)(7)(A) or (B) apply only if the individual is visiting the client or providing direct care and supervision to that client only.
- (8) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.
- (d) Prior to employment, residence or initial presence in the facility, all individuals subject to a criminal record review shall:
 - (1) Obtain a Department of Justice clearance or a criminal record exemption as required by the Department or
 - (2) Request a transfer of a criminal record clearance as specified in Section 87819(a)(2) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (e) Violation of Section 87819(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.
 - (1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.0822.
- (f) Violation of Section 87819(d) may result in a denial of the license application or suspension and/or revocation of the license.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- | (g) If the criminal record transcript of any individuals specified in the Health and Safety Code Section 1522(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for a crime other than a minor traffic violation, for which the fine was less than \$300, and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the following actions:
 - (1) For initial applicant, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - | (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1568.092 and deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, including spouses of the applicant, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1568.092 and denial of the application or revocation of the license if the individual continues to provide services and/or reside in the facility.
- | (h) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- | (i) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 87866.
- | (j) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
 - (1) Documentation shall be available at the facility for inspection by the Department.

87819	CRIMINAL RECORD CLEARANCE (Continued)	87819
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- (k) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.
 - (1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:
 - (A) The law enforcement agency and court involved;
 - (B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;
 - (C) The individual's current and pending legal involvement; and
 - (D) The individual's current address and phone number.
- (l) The Department may seek verification of an individual's criminal record as reported to the Department from any member of the public or affected individual.
 - (1) Upon obtaining confirmation of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072 and 1568.09, Health and Safety Code.

87819.1 CRIMINAL RECORD EXEMPTION**87819.1**

- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87819.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1568.09(c)(4);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (b) In addition to the requirements of Section 87819.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
 - (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 12/02), Removal Confirmation - Denial, LIC 300B (Rev. 12/02), Removal Confirmation - Rescinded, LIC 300C (Rev. 12/02), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 12/02).
- (c) After a review of the criminal record transcript, the Department may grant an exemption if:
 - (1) The applicant/licensee requests an exemption for himself or herself, or
 - (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
 - (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
 - (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.
- (d) To request a criminal record exemption, individuals must submit information that indicates that he/she meets the requirements of Section 87819.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within thirty (30) days of the date of the Department's notice.
 - (1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department to process the exemption request, pursuant to Section 87819.1(e).
 - (2) If the individual who requests a criminal record exemption is an employee or resident other than a spouse or dependent family member and does not submit the information requested in the Department's written notice within 30 days of the date of the notice, the Department may cease processing the exemption request and close the case.

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

(3) If the individual who requests a criminal record exemption is an applicant, licensee, spouse or dependent family member and does not submit the information requested in the Department's written notice within 30 days of the date of the notice, the Department may deny the exemption request.

(e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

(1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.

(2) Period of time since the crime was committed and number of offenses.

(3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.

(4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(5) Granting by the Governor of a full and unconditional pardon.

(6) Character references.

(A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 9/02]).

(7) A certificate of rehabilitation from a superior court.

(8) Evidence of honesty and truthfulness as revealed in exemption application documents.

(A) Documents include, but are not limited to:

1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and

2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

(9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
 - (1) Facility and type of association.
 - (2) The individual's age at the time the crime was committed.
- (g) The Department may deny the individual's exemption request if:
 - (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
 - (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to their application for a criminal record clearance or exemption,
 - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
 - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
 - (2) Is on probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87819.1(j)(2).

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (k) The Department shall consider granting a criminal record exemption if the individual's criminal record history meets all of the applicable criteria specified in Sections 87819.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87819.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (6) The individual has not been convicted of a violent felony.
 - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87819.1(k)(1) through (5) above shall begin from the last date of conviction(s).

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87819.1(k)(1) through (6).
- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1568.09(f)(1) of the Health and Safety Code.

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Health and Safety Code Section 1568.09(f)(1) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

- (1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.
- (2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (3) Penal Code Section 203 – Any mayhem.
- (4) Penal Code Section 206 - Felony torture.
- (5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
- (6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.
- (7) Penal Code Section 215 – Carjacking.
- (8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
- (9) Penal Code Section 243.4 – Sexual battery.
- (10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.

HANDBOOK CONTINUES

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- (11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
- (12) Penal Code Section 264.1 – Rape in concert.
- (13) Penal Code Section 266 – Enticing a minor into prostitution.
- (14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
- (15) Penal Code Section 266h(b) – Pimping a minor.
- (16) Penal Code Section 266i(b) – Pandering a minor.
- (17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
- (18) Penal Code Section 267 – Abduction for prostitution.
- (19) Penal Code Section 269 – Aggravated assault of a child.
- (20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
- (21) Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
- (22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
- (23) Penal Code Section 285 – Incest.
- (24) Penal Code Section 286 – Sodomy.
- (25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.

HANDBOOK CONTINUES

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

HANDBOOK CONTINUES

- (26) Penal Code Section 288a – Oral copulation.
- (27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
- (28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
- (29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
- (30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
- (31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
- (32) Penal Code Section 311.3 – Sexual exploitation of a child.
- (33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
- (34) Penal Code Section 311.10 – Advertising or distributing child pornography.
- (35) Penal Code Section 311.11 – Possessing child pornography.
- (36) Penal Code Sections 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.
- (37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
- (38) Penal Code Section 368 – Elder or dependent adult abuse.
- (39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
- (40) Penal Code Section 451(a) or (b) – Arson.

HANDBOOK CONTINUES

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- (41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.
- (42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.
- (43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.
- (44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
- (45) Penal Code Sections 664/187 – Any attempted murder.
- (46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
- (47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.
- (50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction
- (52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 87819.1(n)(1) through (4) below:
 - (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has no more than one conviction;
 - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and
 - (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.
- (o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (p) If the Department denies or cannot grant a criminal record exemption the Department shall:
 - (1) For initial applicants, deny the application.
 - (2) For current licensees, the Department may institute an administrative action including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1568.092, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1568.092, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 87819.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
- (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.
 - (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
 - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 87819.1(q)(1) above, the Department may, in its discretion, grant or deny the subsequent request for an exemption.
 - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in this section. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

87819.1 CRIMINAL RECORD EXEMPTION (Continued)**87819.1**

- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
 - (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 3/02).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).
- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
 - (1) The basis on which the Department granted the exemption;
 - (2) The nature and frequency of client contact in the new position;
 - (3) The category of facility where the individual wishes to transfer;
 - (4) The type of clients in the facility where the individual wishes to transfer;
 - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations.
 - (6) Whether the exemption meets current exemption laws or regulations.
- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

87819.1	CRIMINAL RECORD EXEMPTION (Continued)	87819.1
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- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
 - (1) The exemption was granted in error or
 - (2) The exemption does not meet current exemption laws or regulations or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
 - (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
 - (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate the appropriate administrative action.
- (x) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072, 1568.082, 1568.09, 1568.092, and 13143, Health and Safety Code.

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87853	FOLLOW-UP VISITS TO DETERMINE COMPLIANCE	87853
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- (a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
 - (1) The follow-up visit shall be conducted within ten working days following the dates of corrections specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required.
 - (2) Except as specified in Section 87854, no penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty (Facility Civil Penalty Assessment - LIC 421 (10/89)).
- (c) A notice of penalty shall be in writing and shall include:
 - (1) The amount of penalty assessed, and the date the payment is due.
 - (2) The name and address of the agency responsible for collection of the penalty.
- (d) When an immediate penalty has been assessed and the correction is made while the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.07 and .072, Health and Safety Code.

87854 PENALTIES**87854**

- (a) A penalty of \$50 per day, per cited violation, shall be assessed for serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) An immediate penalty of \$100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1568.09(b) has not obtained a Department of Justice clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 87819(d) prior to the individual's employment, residence or initial presence in the facility.
 - (1) Violation of Section 87819(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.
 - (A) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.09.
 - (2) Progressive civil penalties specified in Sections 87854(c) and (d) below shall not apply.
- (c) When a facility is cited for a deficiency and violates the same regulation subsection within a 12-month period, the facility shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (d) When a facility, that was cited for a deficiency subject to the immediate penalty assessment specified in Section 87854(c) above, violates the same regulation subsection within a 12-month period of the last violation, the facility shall be cited and an immediate penalty of \$1,000 per cited violation shall be assessed for one day only. Thereafter a penalty of \$100 per day, per cited violation, shall be assessed until the deficiency is corrected.
 - (1) For purposes of Sections 87854(c) and (d) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

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An example of the same regulation subsection are Sections 87218(a)(2) and 87218(a)(5). Sections 87218(a) and 87218(b) are not the same regulation subsection.

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87854	PENALTIES (Continued)	87854
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- (e) If any deficiency is not corrected by the date specified in the notice of deficiency, a penalty shall be assessed for each day following that date until compliance has been demonstrated.
- (1) Immediate penalty assessments specified in Sections 87854(b), (c) and (d) above shall begin on the day the deficiency is cited.
 - (2) If an immediate penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (f) If a licensee or his/her representative reports to the Department that a deficiency has been corrected, the penalty shall cease as of the day the Department receives notification that the correction was made.
- (1) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
 - (2) If it is verified that the deficiency has not been corrected, penalties shall continue to accrue.
 - (3) If it is verified that the correction was made prior to the date of notification, the penalty shall cease as of that earlier date.
- (g) Unless otherwise ordered by the Department all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.
- (h) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (g) above.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072, 1568.0822, and 1568.09, Health and Safety Code.

87855	ADMINISTRATIVE REVIEW	87855
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- (a) A licensee or his/her representative shall have the right to request a review of a notice of deficiency and/or notice of penalty, within 10 working days of receipt of such notice(s).
- (1) If the deficiency has not been corrected, penalties shall continue to accrue during the review process.
- (b) The review shall be conducted by a higher level staff person than the evaluator who issued the notice(s).

87855	ADMINISTRATIVE REVIEW (Continued)	87855
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- (c) If the reviewer determines that a notice of deficiency or notice of penalty was not issued or assessed in accordance with applicable statutes and regulations of the Department, or that other circumstances existed, he/she shall have the authority to amend or dismiss the notice.
- (d) The reviewer shall have the authority to extend the date specified for correction of a deficiency, if warranted by the facts or circumstances presented to support a request for extension.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.07 and .072, Health and Safety Code.

87855.1	DENIAL OR REVOCATION OF LICENSE FOR FAILURE TO PAY CIVIL PENALTIES	87855.1
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- (a) The licensee shall be responsible for paying civil penalties.
 - (1) Unless otherwise provided, the transfer, surrender, forfeiture or revocation of a license shall not affect the licensee's responsibility for paying any civil penalties accrued while the license was in effect.
- (b) The Department shall have the authority to deny or revoke any license for failure to pay civil penalty assessments.
 - (1) The Department shall have the authority to approve payment arrangements acceptable to the Department.
 - (2) The Department shall have the authority to approve the form of payment.
 - (3) The licensee's failure to pay civil penalty assessments pursuant to a payment plan approved by the Department may result in the denial or revocation of any license, and/or any other appropriate action.
- (c) Any denial or revocation of the license for failure to pay civil penalties may be appealed as provided by Health and Safety Code Section 1568.065.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.065, 1568.072, 1568.0822, and 1568.09, Health and Safety Code.

87858	UNLICENSED FACILITY PENALTIES	87858
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- (a) An immediate penalty of \$100 per resident per day shall be assessed for the operation of an unlicensed facility under the following condition:
- (1) The operator has not submitted a completed application for licensure within 15 calendar days of issuance of the Notice of Operation in Violation of Law, (LIC 195 (9/87)) pursuant to Section 87806, and continues to operate.
 - (A) For purposes of this section, an application shall be deemed complete if it includes the information required in Section 87818.
 - (B) The completed application shall be deemed to be submitted when received by the Department.
- (b) A penalty of \$200 per resident per day shall be assessed for the continued operation of an unlicensed facility as follows:
- (1) On the 16th calendar day after the operator has been issued the Notice of Operation in Violation of Law, and has not submitted a completed application as required.
 - (A) The penalty of \$200 per resident per day shall continue until the operator ceases operation, or submits a completed application pursuant to Section 87818.
 - (2) Unlicensed operation continues after denial of the initial application.
 - (A) Notwithstanding any appeal action, facility operation must cease within 10 calendar days of the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.
 - (B) The penalty of \$200 per resident per day shall continue until the operator ceases operation.
- (c) If the operator of the unlicensed facility or his/her representative reports to the Department that unlicensed operation, as defined in Sections 87801 (u)(1) and 87806, has ceased, the penalty shall cease as of the day the Department receives the notification.
- (1) A site visit shall be made immediately or within five working days to verify that the unlicensed facility operation has ceased.
 - (2) Notwithstanding (c) above, if the unlicensed facility operation has not ceased, penalties shall continue to accrue without interruption from the date of initial penalty assessment.

87858	UNLICENSED FACILITY PENALTIES (Continued)	87858
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- (d) All penalties shall be due and payable upon receipt of the Notice for Payment from the Department, and shall be paid by check or money order made payable to the agency indicated in the notice.
- (e) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (d) above.
- (f) Payment of penalties or application for a license in response to a citation under this section does not permit the operation without a license of a Residential Care Facility for the Chronically Ill.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072 and 1568.0821, Health and Safety Code.

87859	UNLICENSED FACILITY ADMINISTRATIVE APPEAL	87859
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- (a) The operator of an unlicensed facility or his/her representative shall have the right to appeal the penalty assessment within 10 working days after service of the penalty assessment.
 - (1) If the unlicensed facility operation has not ceased, the penalty shall continue to accrue during the appeal process.
- (b) The appeal review shall be conducted by a higher level staff person than the evaluator who issued the penalty.
- (c) If the reviewer of the appeal determines that the penalty assessment was not issued in accordance with applicable statutes and regulations of the Department, he/she shall have the authority to amend or dismiss the penalty assessment.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072 and 1568.0821, Health and Safety Code.

87861	REPORTING REQUIREMENTS (Continued)	87861
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- (1) Events reported shall include the following:
 - (A) Death of any resident from any cause.
 - (B) Any injury to any resident which requires medical treatment.
 - (C) The use of an Automated External Defibrillator.
 - (D) Any unusual incident or resident abuse which threatens the physical or emotional health or safety of any resident.
 - (E) Any suspected physical or psychological abuse of any resident.
 - (F) Poisonings.
 - (G) Catastrophes.
 - (H) Communicable diseases, as specified in California Code of Regulations, Title 17, Section 2502.
 - (I) Fires or explosions which occur in or on the premises.
- (2) Information provided shall include the following:
 - (A) Resident's name, age, sex, and date of admission.
 - (B) Date and nature of event.
 - (C) Attending physician's name, findings, and treatment, if any.
 - (D) Disposition of the case.
- (c) The items below shall be reported to the Department within 10 working days following the occurrence.
 - (1) Organizational changes.
 - (2) Any change in the licensee's or applicant's mailing address.
 - (3) Any change of the chief executive officer of a corporation or association.
 - (A) Such notification shall include the new chief executive officer's name and address.

87861	REPORTING REQUIREMENTS (Continued)	87861
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- | (B) Fingerprints shall be submitted as specified in Section 87819.
- (4) Any changes in the plan of operation which affect the services to residents.
- (d) The items specified in (b)(1)(A) through (I) above shall also be reported to the resident's authorized representative, if any.
- (e) The items specified in (b)(1)(E) through (G) above shall also be reported to the local health officer, when appropriate, pursuant to Title 17, California Code of Regulations, Sections 2500, 2502 and 2503, including:
- (1) Report to the local health department any resident, licensee, administrator, employee or volunteer whose tuberculin skin test converts from negative to positive.
- (2) Report to the local health department any current resident who is currently taking medications for tuberculosis.
- (3) Report to the local health department any resident who is currently taking medication for tuberculosis and plans to relocate or has relocated.
- (f) Fires or explosions which occur in or on the premises shall be reported immediately to the local fire authority; in areas not having organized fire services, to the State Fire Marshal within 24 hours; and to the Department no later than the next working day.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072 and 1797.196, Health and Safety Code.

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- (j) Prior to employment or initial presence in the facility, all employees and volunteers subject to a criminal record review shall:
 - (1) Obtain a Department of Justice clearance or a criminal record exemption as required by law or Department regulations or
 - (2) Request a transfer of a criminal record clearance as specified in Section 87819(a)(2) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (k) Residents shall not be used as substitutes for required staff but shall be permitted, as a voluntary part of their program of activities, to participate in household duties and other tasks suited to the resident's needs and abilities.
 - (1) Such duties and tasks shall be specified in the resident's needs and services plan.
- (l) When regular staff members are absent, there shall be coverage by personnel capable of performing assigned tasks as evidenced by on-the-job performance.

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- | (a) Personnel records shall be maintained on the licensee, administrator and each employee, and shall contain the following information:
- (1) Employee's full name.
 - (2) Driver's license number if the employee is to transport residents.
 - (3) Date of employment.
 - (4) A statement signed by the employee that he/she is at least 18 years of age.
 - (5) Home address and phone number.
 - (6) Documentation of educational background, continuing education hours, training and/or experience, as specified in Section 87865.
 - (7) Past work experience, including types of employment and former employers.

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- (A) Section 1568.09(c)(4) of the Health and Safety Code provides in part:

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision.

- (B) Section 1568.09(b)(2) of the Health and Safety Code provides:

Any person, other than a client, residing in the facility.

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- (8) Duties of the employee.
- (9) Termination date, if no longer employed by the facility.

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- (10) Documentation of first aid training.
- (11) Criminal record statement signed by the employee, as required by Section 87819.
- | (12) Documentation of either a criminal record clearance or a criminal record exemption.
- | (13) A health screening as specified in Section 87865(h).
- | (14) Tuberculosis test documents as specified in Section 87865(h).

| (b) Personnel records shall be maintained for all volunteers and shall contain the following:

- (1) A health statement as specified in Section 87865(h)(2)(C).
- (2) Tuberculosis test documents as specified in Section 87865(h).
- (3) For volunteers that are required to be fingerprinted pursuant to Section 87819:
 - (A) A signed statement regarding their criminal record history.
 - (B) Documentation of either a criminal record clearance or a criminal record exemption.

| (c) All personnel records shall be retained for at least three years following termination of employment.

| (d) All personnel records shall be maintained at the facility site and be available to the licensing agency for review.

- (1) The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the Department at the facility site upon request.

| (e) In all cases, personnel records shall document the hours actually worked.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.072, Health and Safety Code.